

APPEAL NO. 021463
FILED JULY 23, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 14, 2002. The hearing officer determined that the appellant/cross-respondent (claimant) had not made a good faith search for employment commensurate with his ability to work for the second, third, and fourth quarters of supplemental income benefits (SIBs). He further determined that the claimant's impairment rating (IR) was 15% in accordance with the report of the designated doctor, which was not contrary to the great weight of other medical evidence.

The claimant has appealed the SIBs decision, arguing that he made a good faith search. The respondent/cross-appellant (carrier) responds that this portion of the decision should be affirmed. The carrier appeals the 15% IR finding, arguing that the IR rated noninjury components of degenerative spinal conditions. The carrier also asserts that the injury or the impairment did not directly result in the claimant's unemployment. The claimant has not responded to this appeal.

DECISION

We affirm the hearing officer's decision.

The claimant agreed that he had some ability to work, although he asserted that he could not lift his left arm over his head, turn his neck without numbness, or drive for long periods of time, although he was able to drive and had a commercial driver's license. His experience and education had been as a truck driver. He did not search for any driving jobs and agreed during his testimony that he had no experience and training for most of the jobs that he sought. He had retired and was drawing Social Security retirement as well as union retirement. The IR report from the designated doctor reported cervical degenerative disc disease, EMG and clinical evidence of C7 radiculopathy, and clinically- and objectively-supported rotator cuff tear of the shoulder. 10% of his IR related to the cervical spine. The motor vehicle accident occurred while he was riding in a sleeper berth and the truck went off the road and dropped 50-75 feet.

SIBs ENTITLEMENT

The hearing officer did not err in finding that the claimant's unemployment was the direct result of his impairment, but that he had not made a good faith search for employment during the qualifying periods for the second through fourth quarters. The injury need not be the sole cause of unemployment to support a "direct result" finding. See Texas Workers' Compensation Commission Appeal No. 990788, decided May 19, 1999.

It appears that the hearing officer considered all the factors set out in Tex. W.C. Comm'28 TEX. ADMIN. CODE §130.102(e) (Rule 130.102(e)) in evaluating the job search conducted by the claimant. We cannot agree that his decision is so against the great weight and preponderance of the evidence so as to be manifestly unfair or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

IMPAIRMENT RATING

It is axiomatic, in case law having to do with aggravation, that the employer accepts the employee as he is when he enters employment. Gill v. Transamerica Insurance Company, 417 S.W.2d 720, 723 (Tex. Civ. App.-Dallas 1967, no writ). An incident may indeed cause injury where there is preexisting infirmity where no injury might result in a sound employee, and a predisposing bodily infirmity will not preclude compensation. Sowell v. Travelers Insurance Company, 374 S.W.2d 412 (Tex. 1963). However, the compensable injury includes these enhanced effects, and, unless a first condition is one for which compensation is payable under the act, a subsequent carrier's liability is not reduced by reason of the prior condition. St. Paul Fire & Marine Insurance Company v. Murphree, 357 S.W.2d 744 (Tex. 1962). If the prior condition is compensable, the appropriate reduction for a prior compensable injury must be allowed through contribution determined in accordance with Section 408.084. In this case, although there may have been underlying degenerative conditions, this did not invalidate the designated doctor's IR, which was entitled to presumptive weight barring a great weight of medical evidence to the contrary. A doctor who reviewed the designated doctor's report on behalf of the carrier agreed that it was in conformity to the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association. The hearing officer is supported in his finding that the other IR does not amount to a "great weight."

We affirm the decision on all points appealed.

The true corporate name of the insurance carrier is **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**PRENTICE HALL CORPORATION SYSTEM INC.
800 BRAZOS
AUSTIN, TEXAS 78701.**

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Judge